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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 MARSHALL O'DAL WILSON,

11 Plaintiff,

12 v.

13 KING COUNTY JAIL FACILITY, et al.,

14 Defendants.
15

Case No. C07-1273-RSL-JPD

REPORT AND RECOMMENDATION

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17 I. INTRODUCTION AND SUMMARY CONCLUSION

18 Plaintiff Marshall O'Dal Wilson, a state inmate, is proceeding in this 42 U.S.C. § 1983
19 civil rights action against King County Jail personnel Reed Holtgeerts, Ken Ray, and Deborah
20 Nanson, and against Linda Triplett, a supervisor in the Torts Section of the King County
21 Prosecutor's Office. Dkt. Nos. 6, 8, 16, 20. Plaintiff's amended complaint alleges acts and
22 omissions on the part of King County Jail personnel including, but not limited to, allowing a
23 prisoner who was a known carrier of Methicillin-resistant Staphylococcus Aureus ("MRSA")
24 to enter a common containment area and thereby causing Plaintiff to become infected with
25 MRSA. *See* Dkt. No. 8 at 5-6. The present matter comes before the Court on Defendant Linda
26 Triplett's motion to dismiss. Dkt. No. 44. After careful consideration of the motion, Plaintiff's

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1 response, the reply brief, the governing law and the balance of the record, the Court
2 recommends that the motion to dismiss (Dkt. No. 44) be GRANTED.

3 II. FACTS AND PROCEDURAL HISTORY

4 Plaintiff's amended complaint centers on an Eighth Amendment deliberate indifference
5 claim against several King County Jail employees for allegedly allowing a prisoner who was a
6 known carrier of MRSA to be placed in the Jail's open housing units, causing Plaintiff to
7 become infected with MRSA. Dkt. No. 8 at 5-6. According to Plaintiff, these acts and
8 omissions occurred between May 5 and May 25, 2004, when he was confined as a pretrial
9 detainee for a probation violation. Dkt. Nos. 8 at 5, 20 at 5. Upon his release from King
10 County Jail soon thereafter, Plaintiff noticed what he then believed to be a spider bite on his
11 lower back. Dkt. Nos. 8 at 5, 20 at 5. Plaintiff contends that he became bedridden, rendering
12 him unable to work or to later meet with his probation officer, which led to his re-incarceration
13 on or about July 6, 2004. Dkt. No. 8 at 5, 20 at 6. On July 9, 2004, Plaintiff asserts that what
14 he had theretofore believed to be an infected spider bite was diagnosed as MRSA by King
15 County Jail medical personnel. Dkt. No. 20 at 6.

16 On December 21, 2006, Plaintiff filed a compensation claim with the King County "tort
17 claim division" seeking damages related to his contraction of MRSA while confined in King
18 County Jail. Dkt. No. 20 at 9. Specifically, Plaintiff sought compensation for physical and
19 emotional injuries sustained as a result of his serious medical condition, lost wages, and loss of
20 housing. Dkt. No. 8 at 6-7. On or about May 10, 2007, Plaintiff was notified via letter from
21 investigator Sandra Courtway in the King County Prosecutor's Office that his claim was
22 denied. Dkt. No. 16 at 2, 20 at 9.

23 Plaintiff commenced this action on August 15, 2007 by filing a § 1983 complaint. Dkt.
24 No. 6. Plaintiff initially named King County Jail Facility, Courtway, King County Jail Health
25 Staff, King County Health Service Supervisor and King County Risk Management Claim
26 Department as defendants. Dkt. No. 6 at 2-3. Plaintiff filed an amended complaint on

1 September 11, 2007 which added Jane and John Doe defendants, Dkt. No. 8, and on September
2 27, 2007, the Court dismissed the King County defendants from the action, Dkt. No. 9. Only
3 individual defendant Courtway and the Jane and John Doe defendants remained in the case.
4 On October 15, 2007, Defendants moved to dismiss individual Courtway from the action. Dkt.
5 No. 12.

6 On December 3, 2007 and January 14, 2008, while Defendants' motion to dismiss
7 Courtway was pending, Plaintiff filed an "addendum to civil complaint" and "first addendum
8 to complaint," respectively, which each identified King County Jail personnel Reed
9 Holtgeerts, Ken Ray, Deborah Nanson and Linda Triplett, in addition to Courtway, as
10 defendants. Dkt. Nos. 16 at 2, 20 at 3-4. The Court considered these documents as motions to
11 amend, which were granted. Dkt. No. 24 at 5. According to Plaintiff, Holtgeerts is the director
12 of operations for the King County Jail, Ray is the jail commander, Nanson is the King County
13 public health supervisor, and Triplett is Courtway's supervisor. Dkt. Nos. 16 at 2, 20 at 3-4.

14 Defendants' motion to dismiss Courtway was granted by the Court on February 5, 2008
15 for failure to state a claim. Dkt. Nos. 24, 26. In this Court's Report and Recommendation, the
16 Clerk of Court was directed to send Defendants Reed Holtgeerts, Ken Ray, and Deborah
17 Nanson, by first class mail, a copy of Plaintiff's amended complaint (Dkt. No. 8), "addendum
18 to civil complaint" (Dkt. No. 16), and "first addendum to complaint" (Dkt. No. 20).

19 Defendants Holtgeerts, Ray, and Nanson brought a motion to dismiss, which was
20 denied by the Court on August 25, 2008. *See* Dkt. Nos. 38, 54. In this Court's Report and
21 Recommendation, the Court noted that an issue had arisen as to whether Defendant Triplett
22 was sent copies of Plaintiff's amended complaint and addendums. Accordingly, the Court
23 ordered that the Clerk of Court send Triplett, *inter alia*, a copy of Plaintiff's amended
24 complaint and addendums. Soon thereafter, Triplett brought this motion to dismiss. Dkt. No.
25 44.

1 III. DISCUSSION

2 A. Fed. R. Civ. P. 12(b)(6)

3 A federal district court may dismiss a complaint for failure to state a claim pursuant to
4 Fed. R. Civ. P. 12(b)(6) only when it appears beyond a doubt that the plaintiff can prove no set
5 of facts that would entitle him to relief. *Homedics, Inc. v. Valley Forge Ins. Co.*, 315 F.3d
6 1135, 1138 (9th Cir. 2003). In doing so, the district court must accept all factual allegations in
7 the complaint as true and must liberally construe those allegations in a light most favorable to
8 the non-moving party. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Conclusory
9 allegations will not be similarly treated, nor will arguments that extend far beyond the
10 allegations contained in the complaint. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136,
11 1139 (9th Cir. 2003). The district court should not weigh the evidence, ponder factual
12 nuances, or determine which party will ultimately prevail; rather, the issue is whether the facts
13 alleged in the plaintiff's well-pleaded complaint, accepted as true, are sufficient to state a claim
14 upon which relief can be granted. *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

15 B. Plaintiff's Allegations Against Defendant Triplett Fail to State a Claim.

16 Rule 8(a) of the Federal Rules of Civil Procedure requires plaintiffs to submit a
17 complaint "which sets forth . . . a short and plain statement of the claim showing that the
18 pleader is entitled to relief." Fed. R. Civ. P. 8(a). In order to state a claim for relief under
19 § 1983, a plaintiff must assert that he suffered a violation of rights protected by the
20 Constitution or created by federal statute, and that the violation was proximately caused by a
21 person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir.
22 1991); *WAX Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc). This requires
23 the plaintiff to allege facts showing how a specific individual violated a specific right, causing
24 the harm alleged in the plaintiff's complaint. *Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d
25 1350, 1355 (9th Cir. 1981). Vague and conclusory allegations of official participation in civil
26 rights violations are insufficient. *Peña v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).

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1 Furthermore, § 1983 is not a “font of tort law”—harm in the abstract, or tort harm
2 unaccompanied by constitutional deprivation, will not defeat a motion to dismiss for failure to
3 state a claim. *Parratt v. Taylor*, 451 U.S. 527, 532 (1981).

4 In the present case, Plaintiff has failed to allege sufficient facts to state a claim for relief
5 under § 1983 against Defendant Triplett. First, he has failed to set forth facts showing *how*
6 Triplett violated one of his specific constitutional rights. *See Arnold*, 637 F.2d at 1355.
7 Indeed, Plaintiff’s amended complaint and addendums make little reference to Triplett. He
8 alleges that Triplett is Courtway’s supervisor, that Triplett “is responsible for supervising tort
9 claims,” and that she “knew about the substantial risk to inmates being infected with MRSA.”
10 Dkt. No. 16 at 2; Dkt. No. 20 at 4. However, Triplett’s supervision of Courtway and tort
11 claims, and knowledge about inmates’ risk of being infected with MRSA, does not allege,
12 much less establish, a constitutional violation of any kind, substantive or procedural. *Parratt*,
13 451 U.S. at 532; *see also Peña*, 976 F.2d at 471 (noting that even “a liberal interpretation of a
14 [pro se] civil rights complaint may not supply essential elements of the claim that were not
15 initially pled.”) (quoting *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
16 Cir. 1982)) (alteration by *Peña* court).

17 Second, Plaintiff is unable to establish that Triplett violated any particular duty owed to
18 *him*. It appears instead that any duty owed by Triplett was to her employer, not to Plaintiff.
19 Accordingly, even assuming that Triplett supervised Courtway (who recommended that
20 Plaintiff’s internal claim for damages be denied), such conduct does not, standing alone,
21 violate the Constitution or federal law.

22 Third and finally, to the extent Plaintiff attacks an individual decision of Triplett to
23 approve or acquiesce in Courtway’s denial of his claim for compensation, or to otherwise
24 violate certain unspecified “procedural custom[s]” of the King County Jail, see Dkt. No. 8 at 6-
25 7, his suit is barred by United States Supreme Court precedent. Specifically, under the rule set
26 forth in *Hudson v. Palmer*, 468 U.S. 517 (1984), deprivation of a prisoner’s liberty or property

1 interest, caused by the unauthorized negligent or intentional action of a state official, does not
2 state a constitutional claim where the state provides an adequate post-deprivation remedy. *Id.*
3 at 533; *see also Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Barnett v. Centoni*, 31 F.3d
4 813, 816 (9th Cir. 1994) (per curiam).

5 IV. CONCLUSION

6 For the foregoing reasons, the Court recommends that Defendant Triplett's motion to
7 dismiss (Dkt. No. 44) be GRANTED. A proposed order accompanies this Report and
8 Recommendation.

9 DATED this 13th day of January, 2009.

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12 JAMES P. DONOHUE
13 United States Magistrate Judge
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